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OFFICE OF PETITIONS

In re Application of	:	
Spies, et al.	:	
Application No. 10/606,432	:	ON PETITION
Filed: June 25, 2003	:	
Attorney Docket No. ID-8	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed September 30, 2008.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely pay the issue fee in response to the Notice of Allowance mailed June 2, 2008. This Notice set a statutory period for reply of three (3) months. No issue fee having been received, the application became abandoned on September 3, 2008. The Office mailed a Notice of Abandonment on September 25, 2008.

Petitioner states that he did not receive the Notice of Allowance, that he searched his file jacket and the Notice is not contained therein, and requests that the holding of abandonment be withdrawn. In support thereof, petitioner has included a copy of his incoming mail log, showing all mail received for the period from June 2, 2008 to July 2, 2008.

To establish nonreceipt of an Office action, a petitioner must: 1) include a statement that the Office action was not received; 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3) include a copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed.¹ A proper docket report consists of a "docket record where the nonreceived Office action would have been entered had it been received and docketed."² "For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket record showing **all** replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."³

Accordingly, on renewed petition, petitioner must submit a copy of a docket record showing all of his replies docketed for a due date of September 2, 2008.

While the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m), currently \$810 for a small entity; and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

¹ See MPEP 711.03(c) (II).

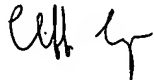
² MPEP 711.03(c) (II) (emphasis added).

³ Id.

By mail: Mail Stop Petitions
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By FAX: (571) 273-8300
 Attn: Office of Petitions

Telephone inquiries related to this decision should be directed
to the undersigned at (571)272-3207.



Cliff Congo
Petitions Attorney
Office of Petitions